In the Supreme Court
OF THE
United States

OCTOBER TERM, 1975

No. 75-1584

GREYHOUND LINES, INC.,
Petitioner,

vs.

AMALGAMATED TRANSIT UNION,
DIVISION 1384, AFL-CIO,

and

THE AMALGAMATED COUNCIL OF GREYHOUND
DIVISIONS, AFL-CIO,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF OF RESPONDENTS

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Table of Authorities Cited

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Pursuant to Rule 24(5) of this Court, Respondents file this brief in response to the Supplemental Brief of Petitioner submitted on July 27, 1976.

Petitioner's supplemental brief contends that this Court's recent decision in *Buffalo Forge Co. v. United*

Steelworkers of America, AFL-CIO, et al., ... U.S. ..... (No. 75-339, July 6, 1976), 92 LRRM 3032, contains principles that apply with equal force to the case herein. Petitioner has misread the *Buffalo Forge* decision.

The issue presented to the Court in *Buffalo Forge* was whether the *Boys Markets* (398 U.S. 235) exception to the Norris-LaGuardia Act (29 U.S.C., Sections 101-15) was applicable when an employer sought to enjoin a *sympathy strike* by a union with which it had a collective bargaining agreement. The *Boys Markets* exception is a "narrow" one (398 U.S. at 253), and applies only

> "[w]hen a strike is sought to be enjoined because it is over *a grievance which both parties are contractually bound to arbitrate* . . . ." 398 U.S. at 254. [Emphasis added.]

Buffalo Forge did not fall within the narrow *Boys Markets* exception. As this Court explained:

> "The driving force behind *Boys Markets* was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties. Only to that extent was it held necessary to accommodate §4 of the Norris-LaGuardia Act to §301 of the Labor Management Relations Act and to lift the former's ban against the issuance of injunctions in labor disputes. Striking over an *arbitrable dispute* would interfere with and frustrate the arbitral processes by which the parties had chosen to settle a dispute. The quid pro quo for the employer's promise to arbitrate was the union's obligation not to strike

> *over issues that were subject to the arbitration machinery.* . . .
>
> "*Boys Markets* plainly does not control this case. The District Court found, and it is not now disputed, that the strike was not *over any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract.* The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; *neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between the employer and respondents.* The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain." 92 LRRM at 3036. [Emphasis added.]

The rationale behind the *Buffalo Forge* decision has no application to this case. The dispute between the Union and the Company is clearly subject to the arbitration procedures of the contract. Greyhound has never contended otherwise, and, in fact, the dispute has been arbitrated and an award issued.

Moreover, the validity of the injunction in the present case does not depend on its coming within the narrow *Boys Markets* exception to Norris-LaGuardia. As this Court noted in *Buffalo Forge*, the *Boys Markets* exception was necessary "to accommodate §4 of the Norris-LaGuardia Act to §301 of the Labor Management Relations Act . . . ." No such accommodation is necessary in the present case, however, since the acts enjoined do not fall within any of the categories set forth in section 4 of Norris-LaGuardia.

In sum, the decision in *Buffalo Forge* does not help Petitioner in the present case. While an injunction in *Buffalo Forge* was not essential to make the arbitration provisions of the collective bargaining agreement meaningful, an injunction was essential in the present case to prevent irreparable harm that would have reduced any arbitration decision in favor of the Union to "an empty victory." *Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R.R. Co.,* 363 U.S. 528, 531 (1960).

Actually, the *Buffalo Forge* decision supports the Union's position in the present case. The Union contends that the District Court properly refused to speculate as to which party was more likely to prevail on the merits at arbitration. (Respondents' Brief, pp. 22-27). The reason for the Union's position is that such speculation would involve consideration of the merits by a court. The parties to the collective bargaining agreement, however, have reserved, for the arbitrator, the role of considering the merits. Thus, for a court to consider the merits would involve a judicial intrusion into the area set aside for the arbitrator.

The Union's position is supported by the *Buffalo Forge* decision:

> "The dissent suggests that injunctions should be authorized in cases such as this at least where the violation, in the court's view, is clear and the court is sufficiently sure that the parties seeking the injunction will win before the arbitrator. But this would involve hearings, findings and judicial interpretations of collective-bargaining contracts.

> It is incredible to believe that the courts would always view the facts and the contract as the arbitrator would; and *it is difficult to believe that the arbitrator would not be heavily influenced or wholly pre-empted by judicial views of the facts and the meaning of contracts if this procedure is to be permitted."* 92 LRRM at 3037-38. [Emphasis added.]

In sum, the Ninth Circuit decision is not contrary to *Buffalo Forge* but, in fact, is buttressed by that case. Accordingly, *Buffalo Forge* lends no support to the Petition for Certiorari, which should be denied.

Dated, August 5, 1976.

Respectfully submitted,

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